

FCC MAIL SECTION

Federal Communications Commission

DA98-2002

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DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 97-225
FM Broadcast Stations.)	RM-9173
(Olney, Archer, Denison-Sherman and)	RM-9254
Azle, Texas; and Lawton, Oklahoma))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 23, 1998

Released: October 2, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making in this proceeding, 12 FCC Rcd 17512 (1997). At the request of Texas Grace Communications ("Texas Grace"), permittee of Station KRZB, Channel 248C2, Olney, Texas, this Notice proposed the reallocation of Channel 248C2 from Olney to Archer City, Texas, and modification of the Station KRZB construction permit to specify Archer City as the community of license. Texas Grace also requested the allotment of Channel 270C2 to Olney as a replacement channel. Texas Grace filed Comments restating its intent to file applications for Channel 248C2 at Archer City and Channel 270C2 at Olney. In response to the Notice, Hunt Broadcasting, Inc. ("Hunt Broadcasting") filed Comments and a Counterproposal. Texas Grace filed Reply Comments.

2. As noted above, the Notice in this proceeding proposed the allotment of Channel 270C2 to Olney as a replacement channel. In response to the Notice, Hunt Broadcasting, licensee of Station KIKM, Channel 269C1, Denison-Sherman, Texas, filed a Counterproposal. In its Counterproposal, Hunt Broadcasting proposed the substitution of Channel 269C for Channel 269C1, reallocation of Channel 269C to Azle, Texas, and modification of the Station KIKM license to specify operation on Channel 269C at Azle.¹ This proposed Channel 269C allotment at Azle conflicted with the proposed Channel 270C2

¹In MM Docket No. 97-104, we rejected an identical counterproposal filed May 19, 1997, by Hunt Broadcasting. The basis for that rejection was the fact that the proposed Channel 269C allotment at Azle conflicted with the Channel 269A allotment at Jacksboro, Texas. Wellington, Texas, 13 FCC Rcd 4454 (1998). In taking this action, we recognized that in two separate dockets (MM Docket No. 96-10 and MM Docket No. 95-126) we had allotted different channels to Jacksboro. However, neither action was final and the Azle proposal was therefore contingent, at the time it was filed, on at least one of these dockets becoming final. In August of 1997, MM Docket No. 96-10 became final, 12 FCC Rcd 12056 (1997). Also in August of 1997, Texas Grace filed its Petition for Rule Making initiating this proceeding. As part of that Petition for Rule Making, Texas Grace proposed the allotment of Channel 270C2 to Olney as a replacement channel. Up until early August of 1997, the proposed Channel 270C2 at Olney conflicted with the Channel 269A allotment at Jacksboro. However, in view of our action in MM docket No. 96-10 finalizing the Channel 269A allotment at Jacksboro, the Texas Grace Petition for Rule Making was not contingent with respect to its proposed Channel 270C2 replacement channel at Olney. By the same token, the Hunt Broadcasting counterproposal for a Channel 269C allotment at Azle was no longer contingent with respect to a Jacksboro allotment and can be considered in the context of this proceeding.

replacement channel at Olney.²

3. Both the Texas Grace Petition for Rule Making and the Hunt Broadcasting Counterproposal were filed pursuant to the Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other parties to file a competing expression of interest. In order to favorably consider such a proposal, we must find that it would result in a preferential arrangement of allotments. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon. 5 FCC Rcd 7094 (1990). We evaluate FM petitions for a new community of license under the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).³

4. We believe that the public interest would be served by reallocating Channel 248C2 from Olney to Archer City, Texas.⁴ This will result in a first local service to Archer City and provide additional service to approximately 110,599 persons. Archer City is not located in any Urbanized Area and the proposed facility will not provide 70 dBu service to 50% of any Urbanized Area. C.f. Headline, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). We are also allotting alternate Channel 282C2 to Olney as a replacement channel.⁵ In this regard, we recognize that a removal of a sole local service from Olney is not obviated by the allotment of a vacant channel. However, in this instance, Station KRZB has never been on the air and represents only a potential service. As such, this reallocation does not raise the same level of concern as reallocating an operating station which removes the sole local service from a community.

5. We also believe that the public interest would be served by substituting Channel 269C for Channel 269C1, reallocating Channel 269C to Azle, Texas, and modifying the Station KIKM license to specify operation on Channel 269C at Azle.⁶ To accommodate this upgrade and reallocation, we are also substituting Channel 267C1 for Channel 268C1 at Lawton, Oklahoma, and are modifying the license of Station KLAU, Lawton, Oklahoma, to specify operation on Channel 267C1.⁷ This will provide a first local service to Azle and result in Station KIKM serving an additional area of 10,306 square kilometers containing a population of 580,110 persons. Denison-Sherman will continue to receive local service from three stations and the area that would lose service from Station KIKM will continue to receive a minimum of five services.

6. In taking this action reallocating Channel 269C to Azle, we realize that Azle is located within

²In its Counterproposal, Hunt Broadcasting also proposed the substitution of Channel 267C1 for Channel 268C1 at Lawton, Oklahoma, and modification of the license of Station KLAU, Channel 268C1, Lawton, to specify operation on Channel 267C1. In this regard, Hunt Broadcasting included a Declaration from Station KLAU consenting to the proposed channel substitution and transmitter relocation.

³The FM allotment priorities are as follows: (1) First fulltime aural service; (2) second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities 2 and 3.

⁴The reference coordinates for the Channel 248C2 allotment at Archer City, Texas, are 33-35-36 and 98-37-31.

⁵The reference coordinates for the Channel 282C2 allotment at Olney, Texas, are 33-08-47 and 98-52-00.

⁶The reference coordinates for the Channel 269C allotment at Azle, Texas, are 33-23-20 and 97-43-03.

⁷The reference coordinates for the Channel 267C1 allotment at Lawton, Oklahoma, are 34-32-31 and 98-31-40.

the Dallas-Fort Worth Urbanized Area. We are concerned with the potential migration of stations from underserved rural areas to well-served urban areas. Community of License, 5 FCC Rcd at 7096. To this end, we will not blindly apply a first local service preference of the FM Priorities when a station seeks to reallocate its channel from a rural area to a suburban community of a nearby urban area. In making such a determination regarding a proposal to award a first local preference to a community in an urbanized area, we apply existing precedents. See e.g. Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and the independence of the suburban community.

7. After careful consideration of this proposal, we believe that Azle is entitled to consideration as a first local service. In regard to this proposal, we first note that Azle, with a population of 8,868 persons according to the 1990 U.S. Census, is located approximately 68 kilometers (42 miles) from Dallas and 27 kilometers from Fort Worth. At the Channel 269C reference coordinates, Station KIKM will provide 70 dBu service to approximately 5% of the Dallas-Fort Worth Urbanized Area. C.f. Headland, Alabama and Chattahoochee, Florida, supra. We also note that Azle is an incorporated community with its own local government, city council city manager, city zoning authority, its own water supply and sewer system, its own police and fire departments, and taxing authority. The Azle Independent School District is comprised of six elementary schools, one junior high school and a high school. In addition to its own hospital and recreational facilities, Hunt Broadcasting has identified several Azle businesses including the First National bank of Azle and the Azle State Bank.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 17, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below to read as follows:

<u>Community</u>	<u>Channel No.</u>
Archer City, Texas	248C2
Olney, Texas	282C2
Denison-Sherman, Texas	-----
Azle, Texas	269C
Lawton, Oklahoma	231C, 237C3, 251C1, 258C3, 267C1, 297C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Texas Grace Communications for Station KRZB, IS MODIFIED to specify operation on Channel 248C2 at Archer City, Texas, in lieu of Olney, Texas, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant

to Section 1.1307 of the Rules.

10. IT IS FURTHER ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Hunt Broadcasting, Inc. for Station KIKM, Channel 269C1, Denison-Sherman, Texas, IS MODIFIED to specify operation on Channel 269C at Azle, Texas, in lieu of Channel 269C1 at Denison-Sherman, Texas, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

11. IT IS FURTHER Ordered. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KLAU Broadcasting, Inc. for Station KLAU, Channel 268C1, Lawton, Oklahoma, IS MODIFIED to specify operation on Channel 267C1, in lieu of Channel 268C1, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

12. Pursuant to Section 1.1104(1)(k) and (2)(k) of the Commission's Rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Texas Grace Communications and Hunt Broadcasting, Inc. are required to submit a rule making fee in addition to the fee required for the applications to effect the changes authorized in this proceeding.

13. A filing window for Channel 282C2 at Olney, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177. Questions related to the window filing process for Channel 282C2 at Olney, Texas, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau